

**STATE OF WASHINGTON**

**Department of Retirement Systems**

**REQUEST FOR PROPOSALS  
RFP NO. 05-002**

**PROJECT TITLE:**

Temporary Personnel Services

**PROPOSAL DUE DATE:**

May 27, 2005

**EXPECTED TIME PERIOD FOR CONTRACT:**

Date of signing or July 1, 2005, whichever is later, thru June 30, 2007

**VENDOR ELIGIBILITY:**

This procurement is open to those Vendors that satisfy the minimum qualifications stated herein and are available for work in Washington State.

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## 1. INTRODUCTION

### 1.1 PURPOSE AND BACKGROUND

The Washington State Department of Retirement Systems, hereafter called the "AGENCY," is initiating this Request for Proposals (RFP) to solicit responses from firms interested in providing temporary personnel services as described herein to the AGENCY.

### 1.2 OBJECTIVE

To provide the AGENCY with immediate access to a skilled source of temporary personnel.

### 1.3 MINIMUM QUALIFICATIONS

The Vendor must be licensed to conduct business in the State of Washington, have a proven track record of successfully supplying similar services to public and private clients for at least the last two years, and must have the necessary resources to supply the skilled resources on demand.

### 1.4 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin the date of signing or July 1, 2005, whichever is later, and end June 30, 2007. Amendments extending the period of performance, if any, shall be at the sole discretion of the AGENCY.

### 1.5 DEFINITIONS

Definitions for the purposes of this RFP include:

**AGENCY** – The Department of Retirement Systems (DRS) is the AGENCY of the State of Washington that is issuing this RFP.

**PROPOSAL** – A formal offer submitted in response to this solicitation.

**PROPOSER** – A Vendor submitting a proposal in response to this RFP.

**REQUEST FOR PROPOSALS (RFP)** – Formal procurement document in which a service or need is identified by the AGENCY. The purpose of an RFP is to provide the Vendor the opportunity to participate in the competitive acquisition process.

**RFP COORDINATOR** - The AGENCY staff member assigned as the point of contact for the purposes of this RFP.

**VENDOR** – A firm in the business of supplying the requested services.

## 2. GENERAL INFORMATION FOR VENDORS

### 2.1 SCOPE OF SERVICES

The contract, if any, resulting from this RFP will require the Vendor to provide the following services at the rates shown.

#### **Administrative/Clerical Support**

Perform general administrative or office support for staff, including electronic mail and calendaring, word processing, report preparation utilizing spreadsheet and database software, and clerical tasks such as answering phones, filing, copying, faxing, sorting and delivering mail, and preparing mass mailings

Answer multi-line telephones and accurately direct calls

Greet and provide assistance to walk-in customers

Draft, proofread, edit, and prepare professional business correspondence

Proofread and edit complex written materials such as policies, administrative decisions, technical standards, etc.

Enter data into existing forms, databases, and computer applications

Perform standard mathematical calculations

Proficiency and experience using computers, computer applications and MS Office software, including Word, Excel, PowerPoint, Access, and Project

Ability to interact professionally with all levels of management and diverse groups of people, both internally and externally

Excellent verbal and written communications skills

Ability to multi-task and be attentive to detail

Ability to maintain confidentiality

<b>RATES:</b>	Office Assistant:	\$10.50/hour - \$13.24/hour
	Secretary:	\$11.01/hour - \$13.87/hour
	Administrative Assistant:	\$13.53/hour - \$20.40/hour

#### **Mail Support/Laborer**

Receive and sort incoming mail within specified timeframes

Ability to move heavy objects, including furniture and cabinets

Possible physical demands:

- Repetitive bending and stooping
- Lifting and carrying up to 50 pounds
- Repetitive pushing/pulling and bending/stooping

**RATES:** Office Assistant: \$10.50/hour - \$13.24/hour  
Laborer: \$11.25/hour - \$12.93/hour

These rates are all-inclusive. The AGENCY will not accept billings for any other charges associated with the provision of these services.

Services must be provided in a timely manner. The AGENCY will provide the Vendor with a separate Statement of Work for each request detailing the service. The Vendor will have up to five (5) working days to provide the requested services.

Services shall be performed pursuant to the terms of the Contract and the Statement of Work provided by the AGENCY.

The Statement of Work will designate the type of work, the skill level expected, the hourly rate, the task or objectives, the work to be performed, deliverables to be produced, the Vendor's roles and responsibilities, the AGENCY's roles and responsibilities, a schedule including the desired start and end dates, the primary work site, a list of necessary materials, the maximum cost for the services and any special requirements.

Staff provided by the Vendor must be bonded and be known to the Vendor to be of good character and possess good work habits. They must also understand the importance of confidentiality and appropriate use of confidential information.

## 2.2 MANAGEMENT AND ORGANIZATION

The majority of work will be conducted in Tumwater, Washington at the AGENCY's headquarters, on 6835 Capitol Boulevard. The Vendor may perform required work off-site, using the Vendor's equipment, if deemed appropriate and authorized in writing by the AGENCY.

Each Statement of Work will identify the AGENCY staff member to whom the Vendor staff will report.

Vendor staff must be available when required and will have access to AGENCY resources.

Vendor staff may, during the course of the execution of the contract, provide services to other clients if those services: 1) Are not a conflict of interest with AGENCY work, as detailed under the general terms and conditions of the eventual contract; and 2) Do not interfere with the completion of the tasks and deliverables identified in the Statement of Work. Written approval from the AGENCY must be obtained before Vendor staff provides services to any other client concurrent with their work for the AGENCY.

AGENCY staff will provide guidance and review regarding progress toward completion of the tasks/deliverables identified in the Statement of Work.

All materials resulting from the contract will be for the sole use of the AGENCY and will become the AGENCY's property.

### 2.3 RFP COORDINATOR

The RFP Coordinator is the sole point of contact in the AGENCY for this procurement. All communication between the Vendor and the AGENCY upon receipt of this RFP shall be with the RFP Coordinator, as follows:

<b>Name</b>	Jim Gunn
<b>Mailing Address</b>	PO Box 48380
	Olympia, WA 98504-8380
<b>Physical Address</b>	6835 Capitol Blvd
	Tumwater, WA 98501
<b>Phone Number</b>	360-664-7264
<b>Fax Number</b>	360-753-5397
<b>E-Mail Address</b>	jimg@drs.wa.gov

Any other communication will be considered unofficial and non-binding on the AGENCY. Vendors are to rely on *written* statements issued by the RFP Coordinator and information posted on the department's official website at <http://www.drs.wa.gov/administration/rfp/>. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Vendor.

## 2.4 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

<b>Issue Request for Proposals</b>	May 13, 2005
<b>Question &amp; answer period</b>	May 13 - 19, 2005
<b>Answers posted to website</b>	May 24, 2005
<b>Proposals due</b>	May 27, 2005, 4:00 pm
<b>Evaluate proposals</b>	May 31 - June 10, 2005
<b>Announce "Apparent Successful Vendor"</b>	June 13, 2005
<b>Debriefing conferences (if requested)</b>	June 14 - 17, 2005
<b>Protest period</b>	June 17 - 21, 2005
<b>Negotiate/sign contract</b>	June 22 - 24, 2005
<b>Contract effective</b>	July 1, 2005

**The AGENCY reserves the right to revise the above schedule.**

## 2.5 QUESTIONS AND ANSWERS

Vendors may submit written questions to the RFP Coordinator via e-mail. Questions must be received no later than 1:00 pm, Pacific Daylight Savings Time, May 19, 2005. The AGENCY will respond to all questions by posting the questions and the answers on the AGENCY Web site within five days of receipt. The questions and answers can be accessed at: <http://www.drs.wa.gov/administration/rfp/>. The AGENCY shall be bound only to written answers to questions.

## 2.6 SUBMISSION OF PROPOSALS

Vendors are required to submit three (3) paper copies of their proposal. Two must have original signatures and the other may have photocopied signatures. The Vendor must also submit a copy of the entire proposal on a CD or floppy disk in a format compatible with MS Word 2000. The proposal, whether mailed or hand delivered, must arrive at the AGENCY no later than 4:00 p.m., Pacific Daylight Savings Time, May 27, 2005.

The proposal is to be sent to the RFP Coordinator at the address noted in Section 2.3. The envelope should be clearly marked to the attention of the RFP Coordinator.

Vendors mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. Vendors assume the risk for the method of delivery chosen. The AGENCY assumes no responsibility for delays caused by any delivery service. Proposals may not be transmitted using electronic media such as facsimile transmission or e-mail.

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of the AGENCY and will not be returned.

## 2.7 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Materials submitted in response to this competitive procurement shall become the property of the AGENCY.

All proposals received shall remain confidential until the contract, if any, resulting from this RFP is signed by the AGENCY and the apparently successful Vendor; thereafter, the proposals shall be deemed public records as defined in RCW 42.17.250 to 42.17.340, "Public Records."

Any information in the proposal that the Vendor desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17.250 to 42.17.340 must be clearly designated. The page must be identified as well as the particular exception from disclosure upon which the Vendor is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

The AGENCY will consider a Vendor's request for exemption from disclosure; however, the AGENCY will make a decision predicated upon chapter 42.17 RCW and chapter 143-06 of the Washington Administrative Code. Marking the entire proposal exempt from disclosure will not be honored. The Vendor must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected Proposer has been given an opportunity to seek a court injunction against the requested disclosure.

## 2.8 REVISIONS TO THE RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be published on the AGENCY website, which is accessible from <http://www.drs.wa.gov/administration/rfp/>. For this purpose, the published questions and answers and any other pertinent information shall be considered an addendum to the RFP and also placed on the web site. It will be the Vendor's responsibility to monitor this site during preparation of their proposal.

The AGENCY also reserves the right to cancel or to reissue the RFP, in whole or in part, prior to execution of a contract.



## 2.9 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with the legislative findings and policies set forth in chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

## 2.10 ACCEPTANCE PERIOD

All proposals must be valid for 60 days from the due date for receipt of proposals.

## 2.11 RESPONSIVENESS

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Vendor is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

The AGENCY also reserves the right, however, at its sole discretion, to waive minor administrative irregularities.

## 2.12 MOST FAVORABLE TERMS

The AGENCY reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms the Vendor can propose. There will be no best and final offer procedure. The AGENCY does reserve the right to contact a Vendor for clarification of its proposal.

The Vendor should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the Vendor's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the AGENCY.

## 2.13 CONTRACT AND GENERAL TERMS & CONDITIONS

The apparently successful vendor will be expected to enter into a contract that is substantially the same as the sample contract included as Attachment B, including its general terms and conditions. In no event is a Vendor to submit its own standard contract terms and conditions in response to this solicitation. The Vendor may submit exceptions as allowed in the Certifications and Assurances document, included as Attachment A to this solicitation. The AGENCY will review requested exceptions and accept or reject the same at its sole discretion.

## 2.14 COSTS TO PROPOSE

The AGENCY will not be liable for any costs incurred by the Vendor in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP

## 2.15 NO OBLIGATION TO CONTRACT

This RFP does not obligate the State of Washington or the AGENCY to contract for services specified herein.

## 2.16 REJECTION OF PROPOSALS

The AGENCY reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

## 2.17 COMMITMENT OF FUNDS

The Director of the AGENCY or her delegate are the only individuals who may legally commit the AGENCY to the expenditure of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

## 2.18 BILLINGS

The Contractor shall bill the AGENCY at the end of each calendar week for the hours worked, at the rate(s) agreed upon and specified in the Statement of Work. Billings must indicate the Vendor staff person, their hours worked, their hourly rate and the extended billing amount. They may also require additional information as called for in the Statement of Work defining the work effort.

Billings must be approved by the Contract Manager before payment will be made.

Payment shall be considered timely if made by the AGENCY within thirty (30) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

The AGENCY may, in its sole discretion, terminate the contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the AGENCY.

## 2.19 INSURANCE COVERAGE

The Contractor is to furnish the AGENCY with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the AGENCY within fifteen (15) days of the contract effective date.

### Liability Insurance

- A. Commercial General Liability Insurance: The Contractor shall maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition. Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- B. Business Auto Policy: As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto

coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

#### Employers Liability (“Stop Gap”) Insurance

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

#### Additional Provisions

Above insurance policy shall include the following provisions:

1. Additional Insured. The State of Washington, Department of Retirement Systems, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.
2. Cancellation. State of Washington, Department of Retirement Systems, shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
3. Identification. Policy must reference the State’s contract number and the AGENCY name.
4. Insurance Carrier Rating. All insurance and bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best’s Reports. Any exception shall be reviewed and approved by the Department of Retirement Systems Risk Manager, or the Risk Manager for the State of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapter 48.15 RCW and 284-15 WAC.
5. Excess Coverage. By requiring insurance herein, the State does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor’s liability under the indemnities and reimbursements granted to the State in this contract.

### Workers' Compensation Coverage

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

### **3. PROPOSAL CONTENTS**

Proposals must be submitted on eight and one-half by eleven (8 1/2 x 11) inch paper. The sections of the proposal are to be submitted in the order noted below:

- A. Letter of Submittal
- B. Signed Certification and Assurances Form (Attachment A to this RFP)
- C. Proposal

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Vendor in preparing a thorough response.

Items in this section marked "mandatory" must be included as part of the proposal for it to be considered responsive. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

#### **3.1 LETTER OF SUBMITTAL (MANDATORY)**

The Letter of Submittal and the attached Certifications and Assurances form (Attachment A) must be signed and dated by a person authorized to legally bind the Vendor to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Vendor and any proposed subcontractors:

- A. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
- B. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
- C. Legal status of the Vendor (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.

- D. Federal Employer Tax Identification number or Social Security number and the Uniform Business Identification (UBI) number issued by the State of Washington Department of Revenue.
- E. Location of the facility from which the Vendor would operate.
- F. Identification of any state employees or former state employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Vendor's organization. If following a review of this information, it is determined by the AGENCY that a conflict of interest exists, the Vendor may be disqualified from further consideration for the award of a contract.

### 3.2 CERTIFICATION AND ASSURANCES FORM (MANDATORY)

A signed copy of the Certification and Assurances form attached as Attachment A.

### 3.3 PROPOSAL (MANDATORY)

The proposal must contain a comprehensive description of services and experience, including the following elements:

- A. The Vendor's source of qualified staff and method of acquisition. (SCORED)
- B. The Vendor's relationship with their staff (employees or sub-contracted, benefits provided, etc.) (SCORED)
- C. Average length of relationship with staff. (SCORED)
- D. References (SCORED)  
List names, addresses, telephone numbers, and fax numbers/e-mail addresses of at least two business references for whom similar services have been provided within the last two years and briefly describe the type of service provided. The Vendor must grant permission to the AGENCY to contact the references. Do not include current AGENCY staff as references.
- E. Related Information (MANDATORY)  
If the Vendor has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Vendor's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.

Submit full details of the terms for default including the other party's name, address, and phone number. Present the Vendor's position on the matter. The AGENCY will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If the Vendor has experienced no such termination for default in the past five years, so indicate.

The AGENCY reserves the right to reject the proposal if there have been terminations for default within the last five years, based upon its judgment concerning the circumstances surrounding the termination(s).

If there have been no terminations for default in the last five years, include a statement to that effect.

- F. OMWBE Certification (Optional)  
Include proof of certification issued by the Washington State Office of Minority and Women-Owned Business if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

**4. EVALUATION AND CONTRACT AWARD**

**4.1 EVALUATION PROCEDURE**

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. An evaluation team, designated by the AGENCY, will score the submissions to determine the apparently successful vendor.

**4.2 EVALUATION WEIGHTING AND SCORING**

The following weighting and points will be assigned for evaluation purposes:

<b>Vendor experience</b>	<b>50 points</b>
<b>Relationship with staff</b>	<b>20 points</b>
<b>Sub-total</b>	<b>70 points</b>
<b>References*</b>	<b>30 points</b>
<b>Total</b>	<b>100 POINTS</b>

\* References will be contacted for the three top-scoring Proposers only. Reference scores will then be added to the Sub-total to arrive at the Total score.

#### 4.3 NOTIFICATION TO PROPOSERS

Firms whose proposals have not been selected for further negotiation or award will be notified by e-mail.

#### 4.4 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, the AGENCY will schedule and hold a debriefing conference with an unsuccessful Proposer. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after a notice that an Apparently Successful Vendor has been selected is sent by the AGENCY. The debriefing must be held within three (3) business days of the request.

Debriefings will be limited to a critique of the requesting Vendor's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

#### 4.5 PROTEST PROCEDURE

The protest procedure is available to Vendors who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Vendor is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests may be submitted by facsimile or e-mail, but must be followed by an original, signed, document.

Vendors protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Vendors under this procurement.

All protests must be in writing and signed by the protesting party or an authorized agent. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFP Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A. A matter of bias, discrimination or conflict of interest on the part of the evaluators.
- B. Errors in computing the score.



- C. Non-compliance with procedures described in the procurement document or AGENCY policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) An evaluator's professional judgment on the quality of a proposal, or 2) AGENCY'S assessment of its own and/or other agencies' needs or requirements.

Upon receipt of a protest, a protest review will be held by the AGENCY. The AGENCY director or an employee delegated by the Director who was not involved in the procurement will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Vendor who submitted a proposal, such Vendor will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- A. Find the protest lacking in merit and uphold the AGENCY'S action; or
- B. Find only technical or harmless errors in the AGENCY'S acquisition process and determine the AGENCY to be in substantial compliance and reject the protest; or
- C. Find merit in the protest and provide the AGENCY options which may include:
  - 1. Correct the errors and re-evaluate all proposals, and/or
  - 2. Reissue the solicitation document and begin a new process, or
  - 3. Make other findings and determine other courses of action as appropriate.

If the AGENCY determines that the protest is without merit, the AGENCY will enter into a contract with the apparently successful vendor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

## **5. RFP ATTACHMENTS**

Attachment A Certifications and Assurances form

Attachment B Sample Purchased Service Contract including General Terms and Conditions

## **ATTACHMENT A (RFP NO. 05-002)**

### **CERTIFICATIONS AND ASSURANCES**

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the AGENCY without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60 day period.
3. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
4. I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the AGENCY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
5. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents, including billing rates, and the attached sample contract including its general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
6. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

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Signature of Proposer

---

Title

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Date

**(SAMPLE) CONTRACT FOR PURCHASED SERVICES  
BETWEEN  
STATE OF WASHINGTON**

**AND**

**This Contract is made and entered into by and between the State of Washington, Department of Retirement Systems (DRS), hereinafter referred to as the "AGENCY", and the below named firm, hereinafter referred to as "CONTRACTOR,"**

Contractor Name \_\_\_\_\_

Address \_\_\_\_\_

City, State & Zip Code \_\_\_\_\_

Phone \_\_\_\_\_

E-mail Address \_\_\_\_\_

Washington State UBI No. \_\_\_\_\_

Federal ID No. \_\_\_\_\_

**PURPOSE**

The purpose of this contract is to provide the AGENCY with immediate access to a skilled source of temporary personnel. .

**SCOPE OF WORK**

The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in RFP 05-002.

**PERIOD OF PERFORMANCE**

The period of performance under this contract will be from July 1, 2005 or date of execution, whichever is later, through June 30, 2007.

**COMPENSATION AND PAYMENT**

AGENCY shall pay an amount not to exceed \_\_\_\_\_  
(\$\_\_\_\_\_) for the performance of all things necessary for or incidental to the performance of work as set forth in this contract. CONTRACTOR'S compensation for services rendered shall be based on the rates included in RFP 05-002.

### BILLING PROCEDURES

In keeping with the procedure identified in RFP 05-002, the AGENCY will pay CONTRACTOR upon receipt of properly completed invoices, which shall be submitted not more often than weekly.

The AGENCY may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the AGENCY.

### CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

Contract Manager for CONTRACTOR is:	Contract Manager for AGENCY is:
<u>Contractor Name</u> <u>Address</u> <u>City, State Zip Code</u> Phone: ( )                      Fax: ( ) E-mail address:	<u>AGENCY Name</u> <u>Address</u> <u>City, State Zip Code</u> Phone: ( )                      Fax: ( ) E-mail address:

### INSURANCE

The CONTRACTOR shall provide insurance coverage as set forth in RFP 05-002. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while performing under the terms of this contract.

The CONTRACTOR shall provide insurance coverage, which shall be maintained in full force and effect during the term of this Contract.

### ASSURANCES

AGENCY and the CONTRACTOR agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

### ORDER OF PRECEDENCE

Each of the Exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and State of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Exhibit A – General Terms and Conditions
- Exhibit B – Request for Proposals No. 05-002
- Exhibit C – CONTRACTOR’S Proposal dated \_\_\_\_\_
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

### ENTIRE AGREEMENT

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

### CONFORMANCE

If any provision of this contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

### APPROVAL

This contract shall be subject to the written approval of the AGENCY'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of \_\_\_ pages and \_\_\_ attachments, is executed by the persons signing below who warrant that they have the authority to execute the contract.

[CONTRACTOR'S NAME]

[AGENCY NAME]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title  
Date

\_\_\_\_\_  
Title

APPROVED AS TO FORM

\_\_\_\_\_  
Assistant Attorney General

\_\_\_\_\_  
Date

## **EXHIBIT A (Sample Contract)**

### **GENERAL TERMS AND CONDITIONS**

**DEFINITIONS** - As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "AGENCY" shall mean the Department of Retirement Systems, of the state of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- B. "Agent" shall mean the Director, Washington State Department of Retirement Systems, and/or the delegate authorized to act on the Director's behalf.
- C. "Contractor" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the Contractor.
- D. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The term "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.
- E. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers. Personal Information includes "Protected Health Information" as set forth in 45 CFR § 164.50 as currently drafted and subsequently amended or revised and other information that may be exempt from disclosure to the public or other unauthorized persons under either Chapter 42.17 RCW or other state and federal statutes.

**ACCESS TO DATA** - In compliance with RCW 39.29.080, the Contractor shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models. Contractor agrees to make personal information covered under this agreement available to AGENCY for inspection or to amend the personal information. Contractor shall, as directed by AGENCY, incorporate any amendments to the personal information into all copies of such personal information maintained by the Contractor or its subcontractors.

**ADVANCE PAYMENTS PROHIBITED** - No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

**AMENDMENTS** - This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35 - The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT – Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the AGENCY.

ATTORNEYS' FEES - In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.

CONFIDENTIALITY / SAFEGUARDING OF INFORMATION - The Contractor shall not use or disclose any information concerning the AGENCY, or information which may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law.

CONFLICT OF INTEREST - Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the AGENCY shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the AGENCY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

COPYRIGHT PROVISIONS - Unless otherwise provided, all Materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the AGENCY. The AGENCY shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the AGENCY effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, Contractor hereby grants to the AGENCY a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the AGENCY.

The Contractor shall exert all reasonable effort to advise the AGENCY, at the time of delivery of Materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document, which was not produced in the performance of this contract. The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

COVENANT AGAINST CONTINGENT FEES - The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. The AGENCY shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISPUTES - Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with Agent.

1. The request for a dispute hearing must:
  - Be in writing;
  - State the disputed issue(s);
  - State the relative positions of the parties;
  - State the Contractor's name, address, and contract number; and
  - Be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working days.
3. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.



GOVERNING LAW - This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

INDEMNIFICATION - To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

INDEPENDENT CAPACITY OF THE CONTRACTOR - The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of the AGENCY. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the AGENCY or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

INDUSTRIAL INSURANCE COVERAGE - The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, AGENCY may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The AGENCY may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the AGENCY under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

LICENSING, ACCREDITATION AND REGISTRATION - The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

LIMITATION OF AUTHORITY - Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS - In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the AGENCY. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION - During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

PRIVACY - Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the AGENCY or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the AGENCY for any damages related to the Contractor's unauthorized use of personal information.

PUBLICITY - The Contractor agrees to submit to the AGENCY all advertising and publicity matters relating to this Contract wherein the AGENCY's name is mentioned or language used from which the connection of the AGENCY's name may, in the AGENCY's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the AGENCY.

RECORDS MAINTENANCE - The Contractor shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by the AGENCY, personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE - The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

RIGHT OF INSPECTION - The Contractor shall provide right of access to its facilities to the AGENCY, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract. The Contractor shall make available information necessary for AGENCY to comply with the client's right to access, amend, and receive an accounting of disclosures of their Personal Information according to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The Contractor's internal policies and procedures, books, and records relating to the safeguarding, use, and disclosure of Personal Information obtained or used as a result of this contract shall be made available to AGENCY and the U.S. Secretary of the Department of Health & Human Services, upon request.

SAFEGUARDING OF INFORMATION - The Contractor shall not use or disclose Personal Information in any manner that would constitute a violation of federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The Contractor agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of all Personal Information.

The Contractor shall protect Personal Information collected, used, or acquired in connection with this Contract, against unauthorized use, disclosure, modification or loss. The Contractor shall ensure its directors, officers, employees, subcontractors or agents use it solely for the purposes of accomplishing the services set forth in this agreement. The Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make it known to unauthorized persons without the express written consent of AGENCY or as otherwise required by law. The Contractor agrees to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure of data in any form. The Contractor shall make the Personal Information available to amend as directed by AGENCY and incorporate any amendments into all the copies maintained by the Contractor or its Subcontractors. The Contractor shall certify its return or destruction upon expiration or termination of this Contract and the Contractor shall retain no copies. If the Contractor and AGENCY mutually determine that return or destruction is not feasible, the Contractor shall not use the Personal Information in a manner other than those permitted or required by state and federal laws.

AGENCY reserves the rights to monitor, audit, or investigate the use of personal information collected, used or acquired by the contractor through this contract. The monitoring, auditing, or investigating may include, but is not limited to, "salting" by AGENCY. Salting is the act of introducing data containing unique but false information that can be used later to identify inappropriate disclosure of data.

The Contractor shall notify AGENCY in writing within five (5) working days of becoming aware of any unauthorized access, use or disclosure. The contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to sanctioning employees, notifying subjects, and taking steps necessary to stop further unauthorized access. The Contractor agrees to indemnify and hold harmless AGENCY for any damages related to unauthorized use or disclosure by the Contractor, its officers, directors, employees, Subcontractors or agents.

Any breach of this clause may result in termination of the contract and the demand for return of all Personal Information.

SAVINGS - In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the AGENCY may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at the AGENCY's discretion under those new funding limitations and conditions.

SEVERABILITY - The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

SITE SECURITY - While on AGENCY premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

SUBCONTRACTING - Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the Department for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the AGENCY or as provided by law.

TAXES - All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

TERMINATION FOR CAUSE – In the event the AGENCY determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the AGENCY has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, the AGENCY shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 days, the Contract may be terminated or suspended. In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. The AGENCY reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the AGENCY to terminate the Contract. A termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (21) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the AGENCY provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

TERMINATION FOR CONVENIENCE - Except as otherwise provided in this contract, the AGENCY may, by 10 days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the AGENCY shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES - Upon termination of this contract, the AGENCY, in addition to any other rights provided in this contract, may require the Contractor to deliver to the AGENCY any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The AGENCY shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the AGENCY, and the amount agreed upon by the Contractor and the AGENCY for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the AGENCY, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of the AGENCY. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The AGENCY may withhold from any amounts due the Contractor such sum as the Agent determines to be necessary to protect the AGENCY against potential loss or liability.

The rights and remedies of the AGENCY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the AGENCY, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the AGENCY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the AGENCY and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to the AGENCY;
6. Complete performance of such part of the work as shall not have been terminated by the Agent; and
7. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the AGENCY has or may acquire an interest.

TREATMENT OF ASSETS -

- A. Title to all property furnished by the AGENCY shall remain in the AGENCY. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the AGENCY upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the AGENCY upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs.
- B. Any property of the AGENCY furnished to the Contractor shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this contract.
- C. The Contractor shall be responsible for any loss or damage to property of the AGENCY which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- D. If any AGENCY property is lost, destroyed or damaged, the Contractor shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
- E. The Contractor shall surrender to the AGENCY all property of the AGENCY prior to settlement upon completion, termination or cancellation of this contract.
- F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

WAIVER - Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of the AGENCY.